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Supreme Court of the United States

OCTOBER TERM, 1952

No. 53

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

PETITIONER'S BRIEF.

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PETITIONER'S BRIEF.

OPINIONS BELOW.

The opinion of the Court below is reported at 193 F. 2d 782 (R. 3053).

The decision and order of the National Labor Relations Board[1] together with the Trial Examiner's Intermediate Report are reported at 86 N. L. R. B. 951 (R. 283, 50).

[1] The National Labor Relations Board will be referred to herein as the "Board"; the National Labor Relations Act, as amended, as the "Act"; the International Typographical Union and the individual respondents before the Board collectively as the "ITU" and the General Counsel of the Board as the "General Counsel."

JURISDICTION.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254.

The decree of the court below was entered on February 11, 1952, (R. 3095). The petition for a writ of certiorari was filed May 6, 1952 and granted October 13, 1952. The grant was limited to the question:

> "2. Whether the demand and insistence of the International Typographical Union that publishers pay employees in their composing rooms for setting 'bogus' violated Section 8(b)(6) of the National Labor Relations Act in view of the fact that composing room employees perform no service incident or essential to the production of a newspaper in their handling of such 'bogused' material." (Question No. 2 presented by the petition for the writ of certiorari.)

STATUTE INVOLVED.

The pertinent provision of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. IV, § 151 *et seq.*), is Section 8(b)(6) which reads as follows:

> "It shall be an unfair labor practice for a labor organization or its agents—
>
> * * *
>
> "(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed."

STATEMENT OF THE CASE.

In November 1947 the General Counsel of the Board, as a result of charges (R. 39-42) filed by petitioner, issued a complaint (R. 43-48) in which it was alleged that the ITU and its agents, in their relations with publishers of daily newspapers throughout the United States, had violated various sub-sections of the National Labor Relations Act, as amended, including Section 8(b)(6) thereof.

Hearings were held on numerous dates from December 9, 1947, to May 18, 1948, following which the Trial Examiner on August 6, 1948, issued his Intermediate Report (R. 50-166).

The pertinent facts are stated at length in the Intermediate Report (R. 50-166) and are summarized in the opinion below (R. 3053).

Briefly the facts are these:

Prior to about 1885, the ITU did not engage in bargaining with employers. It "simply adopted a scale of prices" and other conditions under which its members would work. If an employer could and would pay this scale and meet these conditions, ITU members would work for him. If he could not or would not, no ITU member could work for him (R. 2622-2623). One of the traditions of the ITU is that its members could not work in a shop employing non-members, and if a member violated this tradition he was penalized or expelled from the ITU. This violation of tradition is termed "ratting" (R. 2639). Other traditions of the ITU forbid members to work in a shop where the foreman was not a member (R. 2622-2623), or in a shop which refuses to abide by the ITU's determination of the kind of work to be assigned to its members (R. 2642) or a shop which requires it members to work on "struck work,"[2] or a shop which does not recognize the apprentice system of the ITU (R. 2634-2635).

Another ITU tradition is known as "reproduction" or the setting of "bogus."[3] This "tradition" requires publishers of newspapers to pay substantial sums of money[4]

[2] Work emanating from or going to another shop where ITU members are on strike (R. 2640).

[3] The term "reproduction" and "bogus" are use interchangeably herein and refer to the same practice or tradition. The facts relating to the "bogus" practice are set forth in the Trial Examiner's Intermediate Report (R. 143-148). In their exceptions to this Report, the parties expressed no substantial disagreement to his factual findings.

[4] The Trial Examiner found that the cost of setting "bogus" at a Chicago newspaper amounted to about $50,000 a year; at a Rochester, N. Y., newspaper to over $5,000 a year; and at a New York City newspaper to about $150,000 a year (R. 147). No exceptions were filed to these findings.

to ITU members for work which is not intended for use in the publication of newspapers and which is utterly valueless to employers. (R. 1529-1536).

Advertisers may send advertisements to a newspaper in the form of flat copy, i.e., on paper with the advertisement typewritten or drawn by hand. In such case, the advertisement is sent to the composing room where a compositor sets it in type after which it is placed in a "form." The form is "proofed", and then sent to the stereotype room. There, by the application of pressure, the print in the form is transferred to a cardboard known in the publishing field as a "matrix" or "mat." This matrix serves as a mold from which a metal plate is made for use on the printing press which prints the newspaper.

Advertisers frequently submit their advertisements to publishers in the form of a matrix. When an advertisement is submitted in this form, it by-passes the composing room and goes directly to the stereotype room where a plate is made by stereotypers for use in printing the advertisement. No typesetting whatsoever is needed or required or done in the newspaper plant for the printing of an advertisement submitted in this manner.

The ITU's "tradition" of "setting bogus" permits the publisher to publish any advertisement submitted in the form of a matrix only on the condition that after its publication a "tear sheet" of the advertisement taken from the published newspaper be placed on the "bogus hook" in the composing room and the advertisement thereafter be set ("bogused") by members of the ITU.

This means that the advertisement on the "hook" is set in type and placed in a form, a proof is run from the form so set, and errors are noted and corrected, just as any other non-"bogus" material would be handled. Then, after a calculation has been made of the time consumed in setting the type, the type so set is tossed into the type melting box universally called the "hell box." Compositors who set the "bogused" material are paid for their time, just as they

are paid for setting copy that is used in printing the newspaper.

The demands of the ITU are not limited to insisting that printed words be reset. At Rochester, New York, in 1946, the union demanded that hand-lettered words be "bogused" in addition to printed words. The publisher refused to accede to the union's demands on the ground that such work fell within the photo-engravers' jurisdiction. The union struck solely on this issue and came back to work only after the publisher had acceded to its demands (R. 1554).

The Trial Examiner found that at one Chicago newspaper 10 percent of the local advertising was reproduced ("bogused"); and that the cost of setting "bogus" at various newspapers varied from $150,000 per year at larger newspapers to $5,000 per year at the smaller newspapers; and that the elimination of the "bogus" practice would result in a reduction of labor costs in the composing rooms. (R. 146-147). The Board found that employees devote "approximately 5 percent of their total work time" to the setting of "bogus." (R. 293). Reducing the Board's calculation to the equivalent of men employed, this would mean that five out of every hundred men employed in composing rooms of newspapers employing ITU members would be needed only because of the "bogus" practice.

Generally the ITU contract proposals provided that advertisements be "bogused" within a few days after they were published in the newspapers. When it was impossible to "bogus" such advertisements within the time specified, the matter to be "bogused" remained on the "hook" until the composing room staff was able to "bogus" it. Witness Worth Coutney testified (R. 682) that "* * * as long as there is * * * bogus * * * on the hook * * * beyond the week as required in the contract, the foreman of the [composing] room cannot refuse to hire any extra who may show up for work." Mr. Coutney also testified that if it were not for the "bogus" practice, his newspaper (*Chicago Herald-American*) would hire "conservatively, five less" journey-

men printers in its composing room (R. 680-681). Material is "bogused" regardless of the fact that the advertisement published in the newspaper had been originally set in a union shop by an ITU member (R. 686). Mr. Coutney testified further (R. 683-684) that on one occasion the local ITU union refused to work on regular matter until the matter to be "bogused" was handled.

The Trial Examiner found that if "bogus" accumulates beyond a limited period, the publisher must hire additional men "if any are available." (R. 145). The truth of the matter is that men are not available. ITU President Randolph testified that he knew of no place where there was a surplus of printers (R. 1341) and that he knew of no place where enough men were available to supply the requirements of publishers at straight time rates. (R. 1346). President Randolph testified further:

> "Q. How do you account for the large accumulation of bogus on the hook throughout the country?
> "A. Because the employers generally refuse to hire men at overtime rates to produce it." (R. 1343).

Witness Murphy testified (R. 1534) that the *Rochester Democrat & Chronicle* has

> "* * * had a continually growing problem on reproduction through the fact that it keeps piling up and because the union can't furnish men at straight time rates the back log keeps mounting and we are being required to set it at much higher rates of pay."

At Rochester in early 1947 the publisher had granted a 27½% wage increase. (R. 1535). At that time a large quantity of "bogus" had accumulated. The publisher therefore proposed that the accumulated bogus be set at the old rates or, in the alternative, that 27½% of the accumulated "bogus" be cancelled. (R. 1535, 1553). The union rejected the publisher's proposal, and the publisher finally gave in to the union's demand in order to end a strike and "to get the men back to work." (R. 1553).

The court below found that the "bogus" tradition "requires payment by publishers of substantial amounts regularly for composition work which is never used nor intended for use." (R. 3057).

None of the work performed on "bogused" material is incident to or essential to the processes used in the printing of newspapers. The work is performed after, not prior to publication. It is not performed at publishers' requests, but solely on demand of the ITU that publishers agree to have it performed and to pay for it as a condition to obtaining a contract with the union for the performance of other work incident and essential to the printing of newspapers.

Its early traditions relating to the closed shop, union foremen, struck work, jurisdiction, "bogus," etc. were eventually set forth by the ITU in great detail in a written document known as its "Book of Laws"—principally in a section thereof known as the "General Laws" (R. 2625).[5] These "laws" in effect at the time of the hearing before the Board are set forth in the record at pages 1888-2021.

The General Laws of the ITU constitute a resolution by the ITU that its members could not work for any employer who did not comply with the requirements of these "laws." A member of the ITU who "ratted," i.e., worked in violation of the laws, was subject to expulsion from the ITU in which event he lost mortuary and pension rights incident to his membership and, more important, his job.[6]

Since 1944, the ITU has refused to approve any contract which did not expressly or in substance provide:

> "That the General Laws of the International Typographical Union in effect [January 1 the preceding year], not in conflict with this contract, shall govern the relations between the parties on conditions not specifically enumerated herein." (R. 1242-1247, 58-59).

[5] Other sections of the Book of Laws relate primarily to matters affecting the internal organization of the union such as the tenure of officers, payment of dues, organization of subordinate local unions, etc.

[6] If an employer retained a "rat" in his employ, all other ITU men were obligated by the laws to cease work.

Article IX, Section 2 of the General Laws sets forth the requirements of the ITU respecting "bogus" as follows:

> "The interchanging, exchanging, borrowing, lending or buying of matter, either in the form of types or matrices, between newspapers, between job offices, or between newspapers and job offices, or vice versa, not owned by the same individual, firm or corporation, and published in the same establishment, is unlawful, and shall not be allowed, unless such type or matrices are reset as nearly like the original as possible, made up, read and corrected and a proof submitted to the chairman of the office. Transfer of matter between a newspaper office and a job office, or a job office and a newspaper office, where conducted as separate institutions, and from separate composing rooms, owned by the same individual, firm or corporation, is not permissible unless such matter is reset as nearly like the original as possible, made up, read and corrected and a proof submitted to the chairman of the office: *Provided*, That where an interchange of matter from an English publication to a foreign language publication, or vice versa, is desired, under the provisions of this section, such exchange shall be regulated by agreement between the employers and the local unions interested. The time limit within which borrowed or purchased matter, or matrices, are to be reset shall also be regulated by agreement between the employers and local unions. This section shall not apply to original commercial composition purchased from union commercial trade composition plants or other union composing rooms when such composition is an integral part of production of a particular commercial job".

Article III, Section 2, of the General Laws provides as follows:

> "No local union shall sign a contract guaranteeing its members to work for any proprietor, firm or corporation, unless such contract is in accordance with International law and policy and approved as such by the International President." (R. 2020, 1986).

Woodruff Randolph, President of the ITU testified as follows:

> "Q. Can any local union enter into a contract with an employer in accordance with the I. T. U. law without first submitting its proposals to you as the international president for approval before they are submitted to the employer?
>
> "A. They cannot legally do so.
>
> "Q. Can they enter into an agreement without first submitting the tentative agreement arrived at to you for your approval before submitting it to the local union for a vote?
>
> "A. Not legally.
>
> "Q. Not under I. T. U. law?
>
> "A. No." (R. 1421).

The witness Randolph further testified (R. 1421) that local unions "can't legally adopt a contract that has not had the approval of the I. T. U. Executive Council as being in compliance with our laws and collective bargaining policy." And also, that "since 1944 the union has insisted on a specific clause specifically including the ITU laws in every contract." (R. 1243). Still further that a local contract "must have a contract provision during which time—or in which the time is specified for reproduction; that is the obligation, to do that" and that he "would certainly not approve of [a contract] that exempted reproduction." (R. 1250).

The Trial Examiner found that "subordinate unions are required * * * to comply with ITU laws" and that "neglect or refusal by a subordinate local to obey any law or mandate of the ITU * * * may result in the imposition of a fine or the suspension of the local's charter." (R. 57).

C. C. Lane of the *New York Times* testified (R. 1528) that in negotiations with the ITU local the local negotiators were "insistent" that "bogus" be maintained saying that their international law made it impossible for them to negotiate a contract with the elimination of "bogus."[7]

[7] Contract forms distributed by the ITU to its locals uniformly contained a provision incorporating the "bogus" requirements of ITU laws. (R. 1855, 2064-2065).

Neal Murphy of the *Rochester Democrat & Chronicle* testified (R. 1533) as follows:

> "Q. What has been the position of the publisher at these negotiations with respect to reproduction?
> "A. Why, in every case we pointed out it was pure economic waste and asked to have it discontinued.
> "Q. What was the position of the union?
> "A. They said it was part of their ITU laws and they couldn't do a thing about it."

The amendments to the National Labor Relations Act adopted in June of 1947 impinged upon several ITU "traditions." The union's reaction to the new law was thus described by the court below:

> "Upon passage of the Taft-Hartley Act in June 1947, to become effective August 27, 1947, the ITU at once launched a campaign for the apparent purpose of expressing its disapproval and defiance of the Act and for the further purpose of instructing its subordinate locals and members on methods of avoiding the impact of the various provisions of the Act on the traditional practices and policies of the ITU." (R. 3060).

In the July 1947 issue of the Typographical Journal, the first issue after the passage of the Taft-Hartley Act, President Randolph wrote:

> "* * * So far as the Typographical Union is concerned, we do not intend to have any of our rights or prerogatives, enjoyed for a hundred years, set aside by laws adopted under the lash of party leadership in Congress inspired by representatives of big business whose aim is to wreck organized labor.
>
> * * * *
>
> "There is no law that can compel our members to work for our employers under any conditions not acceptable to us. * * * If the conditions prevailing in a shop are not to our liking, we need not work in that shop." (R. 1795-1796).

By a series of bulletins which were sent to all subordinate unions, beginning about July 1, 1947, the latter were advised of and directed to adhere to a common policy which was to be followed by the ITU and all of its locals (R. 2022-2045, 2408-2413). At its annual convention held August 16 to 22, 1947, the ITU redefined its purpose to maintain its traditional trade union practices in the face of the amendments to the Act, and clarified the policy with which its locals would arm themselves in their relations with employers. This policy was expressed in a resolution to revise Article III, Section 1, of the General Laws (R. 67-69, 2012-2014, 3059, 3064). To further the ITU's policy of law resistance, the Executive Council of the ITU proposed a tenfold increase in assessments for defense purposes, which was adopted by the membership.[8]

By carrying out its 1947 policy the ITU and/or its subordinate locals violated Sections 8(b)(1)(B), 8(b)(2) and 8(b)(3) of the Act resulting in cease and desist orders issued by the Board (R. 297-298, 347-349) and enforced by the court below (R. 3094) with respect to which this Court on October 13, 1952 denied a petition for certiorari (Docket No. 56, October Term 1952).

While finding that other conduct of the ITU violated the Act, the Board found that the ITU's demand and insistance that publishers pay employees for setting "bogus" did not violate Section 8(b)(6) of the Act (R. 293).

Upon review, the court below upheld the Board's finding on "bogus" but upon grounds different from those advanced by the Board.

In arriving at its decision on the "bogus" issue, the Board found that the ITU's practice required publishers to pay employees money for setting "bogus." "Conceding" that the act of setting "bogus" was not a "service" within the meaning of the Act, the Board held that the money was

[8] According to ITU President Randolph, the international union had spent $7,000,000 in strikes and other methods of combatting the law by the time the law had been in effect for one year (See *Editor & Publisher*, September 11, 1948, page 8.)

not paid "in the nature of an exaction," and, accordingly, that this ITU "tradition" was not proscribed by the statute.

In so interpreting Section 8(b)(6) of the Act, the Board relied upon the "legislative history" of the Act.[9] The Board's view of this "legislative history" led it to conclude that a union could not demand that an employer "hire one orchestra and then pay another stand-by orchestra which does no work at all," or demand that an employer "must have 10 musicians, and if [he insists] there is room for only 6, [he] must pay for the other 4 anyway." On the other hand, the Board concluded from its examination of this "legislative history" that a union could demand "paid rest or vacation periods," because payment for such rest or vacation periods is not an "exaction" but payment "for valuable consideration incident to the employment itself." The Board then concluded that the "bogus" practice was more nearly analogous to the paid rest and vacation periods than to the "stand-by" musicians' situation. This reasoning, plus its observation that the "bogus" practice was "not referred to in the debates [in Congress] as one of the industrial practices of the complaint as to "bogus."

The court below similarly reverted to the "legislative history" and interpreted a statement of Senator Taft on the floor of the Senate to mean "that in his opinion the only practice covered by § 8(b)(6) was the practice of demanding money where no *work* had been done." (R. 3085). The court concluded that "While the 'bogus' was not ordinarily used by the employer, the necessary work to compose it was actually done by the employee. Requiring that the employer pay for such work was not a violation of § 8(b)(6)." (R. 3085).

Subsequent to the decision of the court below in this case, the Court of Appeals for the Sixth Circuit reached a

[9] For the convenience of the Court and by courtesy of counsel for respondent No. 238, the legislative history of Section 8(b)(6) is set out in the Appendix of this brief.

different conclusion in another case arising under the same section of the Act. *Gamble Enterprises, Inc.* v. *N. L. R. B.*, 196 F. 2d 61 (C. C. A. 6, decided May 9, 1952).

This court on the petition of the Board granted certiorari in the *Gamble* case on October 13, 1952, No. 238 October Term, 1952. On the same day it granted the petition herein as to the single question of violation of Section 8(b)(6) hereinbefore stated.

SUMMARY OF ARGUMENT.

The decision of the court below is contrary to the express purpose of the Act in that services are not performed and are not intended to be performed in the process of reproduction more commonly characterized as setting of "bogus."

The payments demanded and received for the setting of "bogus" are in the nature of exactions for services which are not performed or not to be performed. The mere fact that employees engage in a physical operation which has no relation to the purpose of their employment does not remove the practice of requiring payment for the setting of "bogus" from the prohibition in the statute against exactions for services not performed or not to be performed.

The requirement for reproduction forced upon publishers by the ITU is but another device to avoid the impact of the Act upon the traditions and policies of that organization. In upholding this activity the court below failed to effectuate the policy of the Act and its decision ignored the meaning of the decision of this Court in *Phelps Dodge Corp.* v. *N. L. R. B.*, 313 U. S. 177.

The court below erred in picking and choosing from remarks made during the legislative proceedings while the Act was under consideration by Congress in an effort to reach a result directly contrary to the clear and precise language of the statute.

Even if it be considered that reference to legislative history was justified in view of the change of policy effectuated

by the amendments to the Act in 1947, then it is respectfully submitted that the court below erroneously interpreted the legislative history of Section 8(b)(6) and that the correct interpretation was that of the Sixth Circuit Court whose decision is under review here today because of the conflict arising between its decision and that of the Seventh Circuit Court in this case.

ARGUMENT.

I.

The decision of the court below is contrary to the express purpose of the Act in that services are not performed and are not intended to be performed in the process of reproduction more commonly characterized as setting of "bogus."

Section 8(b)(6) of the Act in clear and precise language forbids the practices herein complained of, namely, an exaction by a union of monetary consideration from an employer for services he does not want, does not need and is unwilling to accept. The record in this case is clear that in the process of reproduction, more commonly characterized as setting of "bogus", services are not performed and there is no intention of performing any service as that word is universally defined not only in dictionaries but in judicial decisions. What happens is that days, weeks, or months, after the publication of a newspaper, proofs of material previously published through the use of a matrix are taken off the hook and reproduced by members of the ITU. After the type is set it is placed in a form, a proof is taken of it and it is read for correction of errors. If there be any errors they are corrected and another proof taken to make certain of the corrections. Then a calculation is made of the time used in reproducing this copy after which the type is thrown in the "hell-box." The final step in the process is a charge to the employer for the time so consumed.

Under the particular circumstances of the operation in

question it is important to ascertain the meaning of the word "services."

The word "service" is defined in Webster's New International Dictionary, Second Edition, as

> "2. Performance of labor for the benefit of another or at another's command."

In the Shorter Oxford English Dictionary the word "service" is defined as

> "2. A piece of work done for a superior.
> 3. The performance of a duty."

In the Complete Oxford Dictionary it is pointed out that the development of the word "service" has been materially influenced by association with the verb "serve." It stems from the ancient master and servant tradition. Thus, we find "service" defined as

> "II. The work or duty of a servant, work done in obedience to or for the benefit of a master.
> 6. Work done in obedience to and for the benefit of a master.
> 6(b). A duty or piece of work done for a master or superior."

In relation to the word "serve" we find that it means the following:

> "19. To be useful or advantageous to; to be used by. With negative expressed or implied: to avail or profit one nothing.
> 20. To have a definite use or function, answer a purpose, effect or conduce to an end; to admit of being used for some end. With negative expressed or implied: to be of no use, not to avail.
> 21. To help to fulfill or bring about (an end, purpose, etc.); to be a means to, contribute or conduce to, tend to promote.
> 38. As said of persons and things, to supply, provide or furnish with something necessary or requisite."

And finally, in respect of its meaning with respect to help, benefit, advantage and use, we find these definitions:

"IV. 19. The action of serving, helping or benefitting; conduct tending to the welfare or advantage of another.

23. To supply the needs of.

24(b). Of service—of use or assistance, useful or helpful."

Thus, a service must be useful and it must have a purpose. It must have a definite use or function. It must answer a purpose, effect or conduce to an end, for the benefit of another.

The negative of "service" is to be of no use whatsoever.

The Courts in their consideration of the word "service" have universally held that

"Service is the performance of labor for the benefit of another or at another's command." *Hopper* v. *Brodie*, 106 A. 700, 703, 134 Md. 290.

Also see:

Rutherford v. *Tobin Quarries*, 82 S. W. 2d 918, 922, 336 Mo. 1171.

Cameron v. *State Theater Co.*, 152 N. E. 880, 881, 256 Mass. 466.

Boyd v. *Gorman*, 52 N. E. 113, 157 N. Y. 365.

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Journal Publishing Co. v. *State Unemployment Compensation Commission*, 55 P. 2d 570, 574, 175 Or. 627.

Claxton v. *Johnson County*, 20 S. E. 2d 606, 610, 194 Ga. 43.

It is obvious from reading the brief of the Board in support of its petition in *National Labor Relations Board* v. *Gamble Enterprises, Inc.*, No. 238, this Term, that the Board treats the words "services" and "work" as identical. Pages 11 to 15, 18, 20, of Board's brief.

This Court on various occasions has found it necessary to consider the word "work" and define its meaning in a statutory sense. *Tennessee Coal, Iron & R. Co.* v. *Muscoda Local 123*, 321 U. S. 590, and *Jewel Ridge Coal Corp.* v. *Local 6167*, 325 U. S. 161. Its definition was summarized in the *Jewel Ridge* case as meaning

> "1. Physical or mental exertion whether burdensome or not.
>
> 2. Exertion controlled or required by the employer.
>
> 3. Exertion pursued necessarily and primarily for the benefit of the employer and his business."

And all three conditions as defined by the court must be met.

Thus whether the statutory language of Section 8(b)(6) is considered or the Board's substitution or interchangeable use of the word "work" is considered the result is one and the same insofar as this controversy is concerned.

The setting of type on the material going into a newspaper is one of the most essential services incident to the printing of a newspaper. Equally important is the making of a matrix from the type so set, in order that from the matrix in turn there may be made a plate to be used on the press in the actual printing of the newspaper. All of these operations when performed in the plant are services performed for the publication of a newspaper.

But where material used in the publication comes to the newspaper in matrix form and goes direct to the stereotyping room and from there to the press room then the subsequent setting of that material in type—after publication—is not a service performed or a service to be performed, since it is neither wanted nor required by the employer.

Just as it is important to ascertain the meaning of the word "services" so it is important to ascertain the meaning of the word "perform," in determining the meaning of the phrase "services which are not performed or not to be performed."

Webster's New International Dictionary defines the word "perform" as meaning

> "2. To carry out or into full execution; esp. some action ordered or prompted by another or previously promised * * *"

The Oxford English Dictionary defines the word "perform" thus:

> "4. To bring about, cause or effect a result.
> 5. To carry into effect, execute, fulfill, discharge.
> 6. To carry out, achieve, accomplish, execute a process undertaken or entered upon."

Reference to these definitions buttressed as they are by judicial interpretation demonstrates that services are not performed or intended to be performed in the process of reproduction, commonly characterized as setting of "bogus."

II.

The payments demanded and received for the setting of "bogus" are in the nature of exactions for services which are not performed or not to be performed. The mere fact that employees engage in a physical operation which has no relation to the purpose of their employment does not remove the practice of requiring payment for the setting of "bogus" from the prohibition in the statute against exactions for services not performed or not to be performed.

It is significant that the Board and the court below differed in their reasoning in reaching the same result.

The Board found that the setting of "bogus" was not service rendered within the statutory meaning. Notwith

standing this, however, it found that the reproduction practice was similar to stand-by practices normally incident to services required by an employer from his employees in the usual course of his business such as rest periods, lunch periods, vacations with pay and other non-work presence of regular employees upon the employer's premises.

The court below disregarding this reasoning said that

> "The pay for 'setting bogus' was only for the time the employee *actually worked* in setting 'bogus,' amounting to approximately 5% of his total working time. He was a regular employee, not hired merely to set 'bogus,' but hired to do composition work which the employer required. While the 'bogus' was not ordinarily used by the employer, the necessary work to compose it was actually done by the employee. Requiring that the employer pay for such work was not a violation of §8(b)(6)." (Emphasis supplied)

Here it is important to ascertain the meaning of the word "exaction."

As defined by Webster's New International Dictionary, Second Edition, "exaction" is

> "Act or process of exacting; compulsion to furnish; a levying by force; as the exaction of tribute; hence extortion."

As defined by the Shorter Oxford Dictionary "exaction" is

> "2. An illegal or exorbitant demand."

Such being the definition of the word "exaction," what do the facts show as to the payments demanded for compulsory reproduction otherwise known as the setting of "bogus"?

There is no performance of necessary work incident to an employee's employment in the process of setting "bogus." The mere fact that an employee may engage in

a physical operation which has no relation to the purpose of his employment does not remove the practice of requiring payment therefor from the prohibition in the statute against exactions for services not performed or not to be performed.

The court below was in error in characterizing the operation of setting "bogus" as work. It is not work performed in the accepted sense as that word has been defined by this Court. It is not work performed for the benefit of the employer.

The court was also in error in stating that the employee "was a regular employee, not hired merely to set 'bogus' but hired to do composition work which the employer required."

The record is clear that no employer could obtain a contract with an ITU local unless that contract contained a clause requiring the setting of "bogus." It is equally clear that under ITU traditions as formalized into the ITU General Laws no ITU member could maintain his membership in good standing unless he worked under conditions approved by the ITU president as complying with ITU laws. The ITU president testified he would not approve a contract unless it contained a "bogus" clause. Thus the employers have the alternative of yielding to the demand for reproduction or taking a strike.

Again the record is clear that where they yield they had the alternative of hiring extra men, if such are available, or, if not, to pay overtime to get "bogus" off the "hook." The record is equally clear that during the period of this controversy there was a general shortage of printers and that "bogus" could not be worked during straight time. The record shows that threats were made and carried out to stop essential production until "bogus" was worked and that employers were required to hire extra men to set "bogus" whenever extra men were available and sought employment. In one specific case occurring shortly before the Act took effect it was shown that where the ITU had

been unable to furnish sufficient men to set the "bogus" during the term of a contract, it exacted increased payment for the accumulated "bogus" carried over into the new contract term.

As hereinbefore shown, the "bogused" material is not reproduced until long after the newspaper has been printed. It is copy that in the first instance by-passes the composing room entirely. The manual operation of reproduction is not a function necessary or essential to the printing of a newspaper. In fact it is of no use whatsoever to the employer.

Therefore to cause the employer to pay and agree to pay money for reproduction is an exaction within the precise meaning of the Act. It is an illegal and exorbitant demand that can only be characterized as extortion.

III.

The requirement for reproduction forced upon publishers by the ITU is but another device to avoid the impact of the Act upon the traditions and policies of that organization. In upholding this activity the court below failed to effectuate the policy of the Act and its decision ignored the meaning of the decision of this Court in Phelps Dodge Corp. v. N.L.R.B., 313 U.S. 177.

The 1947 amendments to the National Labor Relations Act were enacted not for the benefit of private employers. They did not create rights for individuals but rather they extended the field of the legislation previously enacted for the purpose of promoting industrial peace in the general public interest. In so doing Congress through the amendments to the Act condemned and sought to prohibit many practices of unions that had grown up over a period of years and which in its considered opinion were not conducive to the general welfare. Among these practices is one which for lack of better description is commonly called "featherbedding." Among the most notorious of all

"featherbedding" practices is the practice of reproduction enforced upon employers by the ITU.

As the court below said

> "Upon passage of the Taft-Hartley Act in June 1947, to become effective August 27, 1947, the ITU at once launched a campaign for the apparent purpose of expressing its disapproval and defiance of the Act and for the further purpose of instructing its subordinate locals and members on methods of avoiding the impact of the various provisions of the Act on the traditional practices and policies of the ITU."

The court also found that the ITU maintained an absolute control over its subordinate locals. Under this control, as the record shows, it is impossible for a local to negotiate a contract that does not include a requirement for reproduction. Likewise, it is impossible for an employer to obtain ITU members to perform the necessary and essential work in his composing room unless he agrees to pay for reproduction.

In upholding the ITU practice in this respect, while condemning many other of its practices, the court below failed to effect the policy of the Act and its decision ignored the meaning of the decision of this Court in *Phelps Dodge Corp. v. N.L.R.B., supra*, wherein this Court said:

> "* * * in the nature of things Congress could not catalog all the devices and stratagems for circumventing the policies of the Act. * * * the power with which Congress invested the Board implies responsibility—the responsibility of exercising its judgment in employing the statutory powers."

It is respectfully submitted here that the Board did not properly meet the responsibility with which Congress vested it in disposing of this issue and the court below erred in upholding the Board's decision.

IV.

The court below erred in picking and choosing from remarks made during the legislative proceedings while the Act was under consideration by Congress in an effort to reach a result directly contrary to the clear and precise language of the statute.

The lower court ignored the well settled rule that a construction of a statute should be avoided which would render that statute ineffective or inefficient or which would cause grave public injury or even inconvenience if another and more reasonable interpretation can be made so as to maintain the statutory intent. *Bird* v. *U.S.*, 187 U.S. 118; *U.S.* v. *Powers*, 307 U.S. 214; *Sunshine Anthracite Coal* v. *Adkins*, 310 U.S. 381. In relying upon remarks made during the legislative debates, the lower court also ignored the rule of this Court that debates in Congress such as those which formed the basis for the decision below are inappropriate guides to the ascertainment of the meaning and purpose of the law-making body—particularly when the statutory language is clear. *Aldridge* v. *Williams*, 3 Howard 9; *Duplex Printing Press* v. *Deering*, 243 U.S. 443; *Binns* v. *U.S.*, 194 U.S. 486, 495.

This Court has held that there is no need to refer to legislative history when the statutory language is plain. *Packard Motor Car Co.* v. *N.L.R.B.*, 330 U.S. 485; *Gemsco Inc.* v. *Walling*, 324 U.S. 244. Cf. also Mr. Justice Jackson, concurring opinion in *Schwegmann* v. *Calvert Distillers Corp.*, 341 U.S. 384.

Further such aid as may be obtained from legislative history is admissible only to resolve doubts and not to create them. *Railroad Commission* v. *Chicago, B. & Q. R. Co.*, 257 U.S. 563; *United States* v. *Shreveport Grain & Elevator Co.*, 287 U.S. 77; Cf. Sutherland, *Statutory Construction*, Section 4702 (3rd ed. 1943).

Because the court below erred in relying upon remarks made in Congressional debate rather than upon the plain

and ordinary meaning of the words used in Section 8(b)(6) its decision should be reversed.

V.

Even if it be considered that reference to legislative history was justified in view of the change of policy effectuated by the amendments to the Act in 1947 then it is respectfully submitted that the court below erroneously interpreted the legislative history of Section 8(b)(6) and that the correct interpretation was that of the Sixth Circuit Court whose decision is under review here today because of the conflict arising between its decision and that of the Seventh Circuit Court in this case.

As was stated by the Sixth Circuit Court in the companion case, where the statutory language is plain and clear,

> "No great social or economic good in the field of labor relations invites a strained construction of the challenged section."

Nor can any great social or economic good be achieved through subtle interpretation of legislative history when the statutory language is as plain as it is in this case.

The facts are clear. Before the Act was amended to prohibit exactions for services not performed or not to be performed, the ITU for many years had maintained the practice of requiring publishers as a condition to employing its members to agree to pay for the wholly unnecessary operation of reproducing material used in their newspapers that was not processed through the composing room in the course of publication. At no time after the enactment of Section 8(b)(6) did the ITU change its policy. It has not changed it to this day.

It is inconceivable that Congress in condemning practices in labor relations which caused employers to pay money in

the nature of an exaction for services which are not performed or not to be performed used "a form of expression that permits escape from its condemnation."

If the legislative history is referred to in this case and considered in its entirety that history does not support the decision below here under review. The practices complained of are of no benefit to the employer, they are not wanted by the employer, they are not needed by the employer, they are not willingly accepted by the employer. They cannot be considered conventional stand-by practices normally incident to services required by an employer from his employees in the usual course of his business and of benefit to him.

A proper interpretation of the legislative history demonstrates that the dominant purpose of the section was to prohibit an exaction from an employer for something which "he does not want, does not need, and is not even willing to accept" and which are of no benefit to him whatsoever. It is immaterial whether the process of setting "bogus" is performed by regular employees or by extra employees required of the employer in order to get "bogus" off the "hook." The material fact is that the operation does not constitute the performance of a service necessary to or essential to the printing of the newspaper, and is of no benefit whatsoever to the employer. It is of benefit only to the union which exacts money from the employer in furtherance of the union's traditional policy of "featherbedding."

CONCLUSION.

It is respectfully submitted, on the basis of the author ties cited, and the reasoning herein contained that the d cision of the court below should be reversed.

Respectfully submitted,

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APPENDIX A.

Legislative History of Section 8(b)(6) Labor Management Relations Act, 1947 (61 Stat. 140; 29 U. S. C. § 158(b)(6)).

Legislative action on the Bill which ultimately became the Labor Management Relations Act, 1947 (usually called the Taft-Hartley Act) began with the introduction by Congressman Hartley of H. R. 3020, 80th Cong. 1st Sess. As reported from Committee and passed by the House this Bill contained within it extensive and detailed provisions dealing with the subject of make work and feather-bedding practices. See H. R. 3020, 80th Congress, First Sess., Sec. 2(17) and Sec. 12.

The original Taft Bill as passed by the Senate contained no provisions respecting this subject.

The Bill reported from the Conference Committee contained the present version of Sec. 8(b)(6). No amendments to the conference version were made on the floor of either House.

The material included here constitutes the complete record of all remarks made on the floor or statements made in reports respecting the final version of Sec. 8(b)(6). They are grouped here first by House of Congress and secondly in chronological order.

References to the Congressional Record are to the permanent bound volumes. Page references are also given to LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, published by the National Labor Relations Board, USGPO Wash., 1948, cited "History."

House of Representatives.

Excerpt from House Conference Report No. 510 on H. R. 3020, 80th Congress, First Sess., page 45, 93 Cong. Rec. 6361, 6374, June 4, 1947 (History p. 549):

"* * * It is also made an unfair labor practice for a labor organization or its agents to cause or attempt

to cause an employer to pay any money or thing of value, in the nature of an exaction, for services which are not performed or not to be performed. This provision derives from the provisions of the House bill relating to 'feather-bedding' practices."

Excerpt from speech of Hon. Gerald W. Landis, respecting the amended H. R. 3020 as reported from Conference Committee, 93 Cong. Rec. 6386, June 4, 1947 (History p. 905):

"We added the following sections to the Senate Bill: * * * 'make it a violation of the law for a Union to try to compel an employer to pay its members for services not performed' * * *".

Excerpt from House Document No. 334, 80th Congress First Sess., Presidential Veto Message, 93 Cong. Rec. 7485, June 20, 1947. (History p. 917):

"(3) The bill presents the danger that employers and employees might be prohibited from agreeing on safety provisions, rest-period rules, and many other legitimate practices, since such practices may fall under the language defining 'feather bedding'."

Senate.

Statement of Senator Taft on the floor respecting the amended H. R. 3020 as reported from Conference, 93 Cong. Rec. 6441, June 5, 1947 (History p. 1535):

Mr. Taft:

"There is one further provision which may possibly be of interest, which was not in the Senate bill. The House had rather elaborate provisions prohibiting so-called feather-bedding practices and making them unlawful labor practices. The Senate conferees, while not approving of feather-bedding practices, felt that it was impracticable to give to a board or a court the power to say that so many men are all right, and so many men are too many. It would require a practical application of the law by the courts in hundreds

of different industries, and a determination of facts which it seemed to me would be almost impossible. So we declined to adopt the provisions which are now in the Petrillo Act. After all, that statute applies to only one industry. Those provisions are now the subject of court procedure (*sic*). Their constitutionality has been questioned. We thought that probably we had better wait and see what happened, in any event, even though we are in favor of prohibiting all featherbedding practices. However, we did accept one provision which makes it an unlawful labor practice for a union to accept money for people who do not work. That seemed to be a fairly clear case, easy to determine, and we accepted that additional unfair labor practice on the part of unions, which was not in the Senate bill."

Prepared statement of Senator Taft giving detailed summary of differences between House, Senate and Conference Bills, 93 Cong. Rec. 6443, June 5, 1947 (History p. 1540):

Mr. Taft:

"Section 8 (b) (6) of the conference agreement covers a matter with which the House bill dealt extensively under the topic of featherbedding practices. There was no corresponding provision in the Senate amendment. The provisions in the House bill made unlawful and enjoinable any strike to compel an employer to accede to featherbedding practices. Among the activities defined as a featherbedding practice by the House bill were: (a) Agreeing to employ persons in excess of the number reasonably required, (b) paying money in lieu of employing such an excess number of persons, (c) paying more than once for services performed, (d) paying money for services not performed, and (e) paying a tax for the privilege of using certain articles or operating certain machines or agreeing to restrictions upon their use. While the Senate conferees were in sympathy with the objectives of this portion of the House bill, it seemed to them that it was almost impossible for courts to determine the exact number of men required in hundreds of industries and all kinds

of functions. The provisions in the Lea Act from which the House language was taken are now awaiting determination by the Supreme Court, partly because of the problem arising from the term 'in excess of the number of employees reasonably required.' Therefore, the conferees were of the opinion that general legislation on the subject of featherbedding was not warranted at least until the joint study committee proposed by this bill could give full consideration to the matter. Since the matter of exacting money for services not to be performed borders definitely on extortion, the conferees agreed to the insertion of a paragraph (sec. 8 (b) (6)) which makes it an unfair labor practice to cause or attempt to cause employers to pay money under such circumstances."

Colloquy between Senators Pepper and Taft, 93 Cong. Rec. 6446, June 5, 1947 (History pp. 1544-5):

"Mr. Pepper. Does the provision to which the Senator just referred include language about exactions in connection with featherbedding?

Mr. Taft. Yes.

Mr. Pepper. The Senator was speaking about subparagraph (6) of section 8, on page 8.

Mr. Taft. That is correct. It makes it an unfair labor practice 'to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.'

Mr. Pepper. The definition of 'exact' in Webster's New International Dictionary, second edition, unabridged, is as follows:

To demand or require authoritatively or peremptorily; to enforce the payment of or a yielding of; to compel to yield or furnish; hence to wrest; as a fee or reward when none is due.

Would it be an unfair labor practice for a group of women working in a textile mill to insist upon the employer giving them a rest period of 15 minutes each morning, and to be paid for that work period when they were not actually working?

Mr. Taft. No; I do not think that is in the nature of an exaction.

Mr. Pepper. Suppose they said they were going to strike if they did not get the rest period, and they therefore forced the employer to give it to them as a condition of continuing to work.

Mr. Taft. They are paid for the work they do.

Mr. Pepper. But they are paid for the 15 minutes when they are resting and not working.

Mr. Taft. In my opinion that would not be a violation of this section.

Mr. Pepper. There are contracts in force between a great many unions and employers under which, if a worker reports for work in the morning at the appointed time and finds that he is not going to be required to work that day, the employer must pay him for the day's work. Would insistence by a labor union upon payment of a day's pay to a worker who reported for work in the morning, when the employer gave him no work to do when he got there, be considered an exaction?

Mr. Taft. No; I do not think that is in the nature of an exaction. He is paid for coming to work at the request of the employer. It is not in the nature of an exaction.

Mr. Pepper. What I wanted to emphasize to the able Senator is that the language in the conference report is so broad that it would clearly include such a situation, because it is provided that it shall be an unfair labor practice to 'cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.'

It seems to me that the language is broad enough to cover both the cases which I have mentioned, because they involve a demand that payment be made for time when actually no work was performed.

Mr. Taft. I am sorry to disagree with the Senator, but it seems to me that it is perfectly clear what is intended. It is intended to make it an unfair labor practice for a man to say, 'You must have 10 musicians, and if you insist that there is room for only 6, you must pay for the other 4 anyway.' That is in the

nature of an exaction from the employer for services which he does not want, does not need, and is not even willing to accept."

Statement on the floor by Senator Murray, 93 Cong. Rec. 6498, June 6, 1947 (History pp. 1570-1):

"Mr. Murray. * * *

"The other new unfair labor practice is that with respect to so-called featherbedding. Under a new section 8(6) it is an unfair labor practice to force or require an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed. Let me observe at the outset that what is featherbedding to an employer is invariably something else to the workers. Most frequently such provisions are designed to protect the safety of the workers; many of the contract terms covering railway workers which are claimed to be featherbedding actually had their origin, and continue to have a justification, in safeguarding the life and health of the workers. Full-crew provisions, automatic-coupler requirements, required signal and watchman protections, are examples.

* * * * *

Mr. Taft. I want to point out that railway labor has never been covered by the Wagner Act; it has always been covered by the Railway Labor Act, which provides a somewhat different procedure. We saw no reason to change that situation, because there were no abuses which had arisen in connection with the operation of the Railway Labor Act. In general, we confined our amendments to the bill to acts which, from evidence before the committee, were specifically shown to be abuses.

Mr. Murray. I am referring to the so-called feather-bedding activities in the railroad industry as illustrations of matters that may be insisted upon by workers as a matter of safety for the protection of their health and life. I am merely using them as illustrations of so-called 'feather bedding' which can be justified.

In the mining industry the stationing of men to handle ventilation equipment or to conduct inspections are demanded by the men for their protection. More often, perhaps, these union requirements are directed at the speed-up; there is a limit to physical endurance and many employers have in the past, and would be willing again, to work their men beyond that point did not provisions in the contracts protect them. Speed-up in the automobile industry which existed prior to organization was the main grievance of the workers. Frequently unions impose these conditions for the economic security of their members. Where employment is sporadic and highly skilled the maintenance of the industry itself may demand that men be paid for services not to be performed. We do not cut off the pay of our generals in time of peace; we do not pay a lighthousekeeper only when he is trimming the lamps; we do not pay a watchman only while engaged in the business of catching criminals. This provision is merely a demand that the risks of job insecurity, intermittent employment, and slack be borne by the workers entirely and not by industry. It is of a piece with that industrial practice which in times of depression lays off the men in the shop without even reducing the salary of the vice president."

Statutory analysis offered by Senator Murray, 93 Cong. Rec. 6501, 6505, June 6, 1947 (History pp. 1575, 1579-80):

"Mr. Murray.

"Analysis of Title I of H. R. 3020, Taft-Hartley Bill.

* * * *

"The provisions of section 8 (b) (6) are directed against so-called feather-bedding practices. This section was also added by the conference committee. This provision like so many other provisions of the bill, although directed toward a desirable objective, could easily be used to interfere with legitimate union activities. In evaluating the possible impact of this section it must be borne in mind that many of the practices now viewed as feather-bedding practices had their origin in the health and safety requirements of workers. The determination, therefore, of whether a

particular demand by a union for the employment of additional help is in effect featherbedding or a legitimate demand would in many cases require a detailed knowledge of the requirements of the particular company involved. The difficulty of accumulating this type of information and the type of experience necessary to make a just determination of the issue is obvious.

"The chief danger in the provision is that it may restrict labor organizations in their attempts to combat speed-ups, to protect the safety and health of the workers, and to spread the burden of unemployment. These considerations suggest that the solution of this problem could better be left to the collective bargaining process.".

Statement by Senator Pepper, 93 Cong. Rec. 6514, June 6, 1947 (History p. 1590):

"Mr. Pepper.

"Mr. President, I pass on to the next subject I wish to consider, which is paragraph (6), which reads as follows:

To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or any other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

We had some discussion regarding that yesterday. The able Senator from Ohio submitted his views. I asked the Senator from Ohio two questions: First, what about the case of a group of women workers who demand of the employer a 15-minute rest period every morning, and maybe another one in the afternoon, and who demand pay for the time they are resting? That comes within the language of the bill, in my opinion. At least it is a litigable subject, and this bill is replete with opportunities on the part of employers to sue the unions, to claim an injunction, or to claim some kind of redress from the National Labor Relations Board.

I pointed out another case to the Senator from Ohio. In the contracts of most of the unions I am told that a worker reports for work in the morning. The employer may say, 'I do not have anything for you today.' The worker has gotten up and gone there. He

is ready. Under union contracts the worker can get pay for that day, though he does not work. If he strikes or threatens to strike for such a provision in the contract he comes squarely within this language of demanding pay for a time when he did not work. This is a subject of litigation, and I shall come later to a provision of the bill which will show that one of the ways that the employer can wreck a union is to keep his high-price corporation counsel busily engaged suing the union, attaching its funds, and in other ways making the operation of the union impossible or extremely difficult."

Excerpt from statement of House Conference Managers, 93 Cong. Rec. 6534, June 6, 1947 (History p. 1618):

"* * *. It is also made an unfair labor practice for a labor organization or its agents to cause or attempt to cause an employer to pay any money or thing of value, in the nature of an exaction, for services which are not performed or not to be performed. This provision derives from the provisions of the House bill relating to 'feather bedding' practices."

Supplementary analysis offered by Senator Taft, 93 Cong. Rec. 6859, June 12, 1947 (History pp. 1623-4):

"Section 8 (b) (6): This is a section taken from the elaborate prohibitions in the House bill with respect to featherbedding. All that it does is to make it an unfair labor practice to cause or attempt to cause employers to pay money in the nature of an exaction for services which are not performed or not to be performed. A number of Senators have contended that this means that union requests for payment to employees of wages for lunch and rest periods or for waiting periods when machinery is being repaired will be illegal. It has also been stated that it would be a breach of this section for employees who are asked to report for work so as to be available as a relief squad in the event of emergency or need, to demand any money for their time. Of course this section does not affect such industrial practices, as such activities are done at an employer's request and for

valuable consideration incident to the employment itself. The use of the words 'in the nature of an exaction' makes it quite clear that what is prohibited is extortion by labor organizations or their agents in lieu of providing services which an employer does not want."

Statement of Senator Ball respecting Presidential veto message, 93 Cong. Rec. 7529, June 23, 1947 (History p. 1639):

Mr. Ball:

"Mr. President, in his second list of objections to the bill, under paragraph (3) of his veto message, the President has this to say:

> The bill presents the danger that employers and employees might be prohibited from agreeing on safety provisions, rest-period rules, and many other legitimate practices, since such practices may fall under the language defining "feather bedding."

Mr. President, that again is a complete distortion of the actual wording of the section to which the President refers, which is 8 (b), which makes it an unfair practice for a labor organization—

> 6. To cause or attempt to cause an employer to pay or deliver, or to agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

There is not a word in that, Mr. President, about 'feather bedding.' It says that it is an unfair practice for a union to force an employer to pay for work which is not performed. In the colloquy on this floor between the Senator from Florida and the Senator from Ohio, before the bill was passed, it was made abundantly clear that it did not apply to rest periods, it did not apply to speed-ups or safety provisions, or to anything of that nature; it applied only to situations, for instance, where the Musicians' Federation forces an employer to hire one orchestra and then to pay for another stand-by orchestra, which does not work at all."